

§910.127

2 CFR Ch. IX (1–1–16 Edition)

program rule. Such restriction of eligibility shall be:

(1) Supported by a written determination initiated by the program office;

(2) Concurred in by legal counsel and the Contracting Officer; and

(3) Approved, prior to award, by an approver at least one level above the Contracting Officer.

(c) *Noncompetitive Federal financial assistance.* DOE may award a grant or cooperative agreement on a noncompetitive basis only if the application satisfies one or more of the follow selection criteria:

(1) The activity to be funded is necessary to the satisfactory completion of, or is a continuation or renewal of, an activity presently being funded by DOE or another Federal agency, and for which competition for support would have a significant adverse effect on continuity or completion of the activity.

(2) The activity is being or would be conducted by the applicant using its own resources or those donated or provided by third parties; however, DOE support of that activity would enhance the public benefits to be derived and DOE knows of no other entity which is conducting or is planning to conduct such an activity.

(3) The applicant is a unit of government and the activity to be supported is related to performance of a governmental function within the subject jurisdiction, thereby precluding DOE provision of support to another entity.

(4) The applicant has exclusive domestic capability to perform the activity successfully, based upon unique equipment, proprietary data, technical expertise, or other such unique qualifications.

(5) The award implements an agreement between the United States Government and a foreign government to fund a foreign applicant.

(6) Time constraints associated with a public health, safety, welfare or national security requirement preclude competition.

(7) The proposed project was submitted as an unsolicited proposal and represents a unique or innovative idea, method, or approach that would not be eligible for financial assistance under a

recent, current, or planned notice of funding opportunity, and if, as determined by DOE, a competitive notice of funding opportunity would not be appropriate.

(8) The responsible program Assistant Secretary, Deputy Administrator, or other official of equivalent authority has determined that making the award non-competitively is in the public interest. This authority cannot not be delegated.

(d) *Approval requirements.* Determinations of noncompetitive awards shall be:

(1) Documented in writing;

(2) Concurred in by the responsible program technical official and local legal counsel; and

(3) Approved, prior to award, by the Contracting Officer and an approver at least one level above the CO.

(e) *Definitions.* For purposes of this section, the following definitions are applicable:

Continuation Award—A financial assistance award authorizing a second or subsequent budget period within an existing project period.

Renewal Award—A financial assistance award authorizing the first budget period of an extended project period.

[79 FR 76024, Dec. 19, 2014, as amended at 80 FR 57511, Sept. 24, 2015]

§910.127 Legal authority and effect.

(a) A DOE financial assistance award is valid only if it is in writing and is signed, either in writing or electronically, by a DOE Contracting Officer.

(b) Recipients are free to accept or reject the award. A request to draw down DOE funds constitutes the Recipient's acceptance of the terms and conditions of this Award.

[80 FR 57511, Sept. 24, 2015]

§910.128 Disputes and appeals.

(a) *Informal dispute resolution.* Whenever practicable, DOE shall attempt to resolve informally any dispute over the award or administration of Federal financial assistance. Informal resolution, including resolution through an alternative dispute resolution mechanism, shall be preferred over formal procedures, to the extent practicable.